COMPOSITIONS WITH CREDITORS. — Although a payment to one creditor of a less sum in discharge of a greater, is not a valid accord and satisfaction,[1] yet an agreement with two or more creditors providing for the payment of part of the debt in satisfaction of the whole, is a good composition discharging the whole liability, as the promise of each of the creditors to forego part of his debt furnishes a good consideration for the promises of the other creditors.[2] Thus an insolvent debtor by a composition with all his creditors, could discharge his liability without the aid of any bankruptcy statute. As the satisfaction of the debts was by voluntary agreement, and not by operation of law, as in case of a debt barred by the Statute of Limitations[3] or by a discharge in bankruptcy,[4] there was no moral obligation on which to found a new promise. So a debt once discharged by a composition could not be revived by a subsequent promise.[2]

By the provisions of the Bankruptcy Act of 1898, giving the bankruptcy courts supervision over compositions, it is provided that a court may confirm a composition assented to by a majority of the creditors,[5] and such a composition is binding on them all.[6] Under these circumstances, it was recently assumed that a subsequent promise would not revive the balance of a discharged liability, where all the creditors assented to a composition. *Taylor* v. *Skiles*, 81 S. W. Rep. 1258 (Tenn.).

It may well be urged in support of the above assumption that, although the composition took effect under the terms of the act, it was none the less a voluntary agreement, that such voluntary agreement was a condition precedent to the operation of the act, and that the creditors had a choice between volunteering and letting the bankruptcy proceedings take their course. The weight of authority however seems to be against these arguments. Not only are there decisions contrary to the principal case,[7] but even where only a majority assented and the subsequent promise was to one of the majority, the discharge was held to be by operation of law.[8] Where the terms are accepted only by the majority, obviously the law discharges the debts owed to the dissenting creditors, for they are in no sense parties to a voluntary agreement. Even where all the creditors assent, their assent can hardly be called wholly voluntary. For it is by no means obvious that all would have assented, had there been no statute governing the subject. The fact that a majority assenting could force the composition upon the remainder would have a strong tendency to compel the latter to submit when they realized that resistance would be useless. The case remains the same where a subsequent promise is made to one of the assenting majority. The statute merely gives them the choice of assenting to a composition or of awaiting the regular bankruptcy proceedings. Each method reaches the same result, a discharge, and each is provided by law. The assent of the majority is merely the choice of the swifter form of discharge in preference to the slower. It seems, therefore, that the justice of the decision in the principal case is doubtful, and that the majority of courts are justified in holding that a subsequent promise after a composition

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[1] Foakes *v.* Beer, 9 App. Cas. 605.
[2] Warren *v.* Whitney, 24 Me. 561.
[3] Pittman *v.* Elder, 76 Ga. 371.
[4] Badger *v.* Gilmore, 33 N. H. 361.
[5] 30 Statutes at Large, 544, § 12.
[6] See *In re* Bjornstad, 5 Fed. Rep. 791.
[7] *In re* Merriman's Estate, 44 Conn. 587.
[8] Higgins *v.* Dale, 28 Minn. 126.

will revive the balance of the old liability, on the ground that such composition is merely one form of bankruptcy proceedings under the National Act.

THE EFFECT OF JUDGMENTS BY CONSENT. — There is some difference of opinion among the authorities as to the consequence of a judgment by consent. Some courts refuse to give it the effect of a judgment *in invitum*, and admit the judgment record only as evidence of the agreement reached by the parties.[1] The basis of this position is the theory that no matter upon which the court has not exercised its judicial mind by determining the respective rights of the litigants and pronouncing judgment accordingly can be considered *res judicata*. As a matter of definition, this proposition is scarcely open to question. The real gist of the controversy has been settled by the act of the parties while the court in entering up judgment has performed merely a ministerial function. On the other hand, the parties have caused the court to place their deliberate agreement upon the record as a formal judgment; and except in case of mistake or fraud, it would seem that they should be estopped from later denying it, even though the strict principles of *res judicata* are not applicable.[2] In fact the majority of jurisdictions disregard the argument of definition and hold the judgment binding upon the parties according to its terms.[3] The original cause of action is considered merged in the judgment, and to a later suit between the same parties on the same subject-matter a plea of *res judicata* is a complete defense.

Where, however, the action is simply dismissed by the consent of the parties, there is not the same ground for the argument of estoppel. The terms of the agreement which culminated in the dismissal do not appear in the judgment. The words of the judgment record, "dismissed agreed," are capable of several interpretations. Some courts give to them the effect of the old common law *retraxit*, which is defined as an open and voluntary renunciation by the plaintiff of his suit in court by which he forever loses his cause of action.[4] Others reach the same result by holding that they necessarily imply that the parties have adjusted their differences and merged their cause of action in the judgment of dismissal.[5] The Supreme Court of Tennessee recently endorsed the third view that the record is plain and unequivocal and leaves no room for construction.[6] *Lindsay* v. *Allen*, 82 S. W. Rep. 171. It states only that the parties have agreed to a dismissal and nothing more. Consequently it leaves them in the same position as before the commencement of the litigation. The question seems to be strictly one of intention of the parties as shown by the judgment record. Have they agreed upon renunciation of all claim of right, or upon merger of the cause of action in the judgment, or upon a simple dismissal of the suit without impairing any existing rights? Any one of the three is possible; but the last seems the most natural interpretation, for it is certainly a harsh rule that deprives a person of rights which he has not renounced expressly or by necessary implication.

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[1] Jenkins *v.* Robertson, L. R. 1 H. L. Sc. 117, 122.
[2] See Kelly *v.* Town of Milan, 21 Fed. Rep. 842, 863.
[3] Nashville, etc., Ry. Co. *v.* United States, 113 U. S. 261.
[4] Hoover *v.* Mitchell, 25 Grat. (Va.) 387.
[5] Bank of Commonwealth *v.* Hopkins, 2 Dana (Ky.) 395.
[6] Bishop *v.* McGillis, 82 Wis. 120.